

**PROVIDE FOR THE COMMON DEFENSE: THE
PRESIDENT BYPASSES CONGRESS**

**A MONOGRAPH
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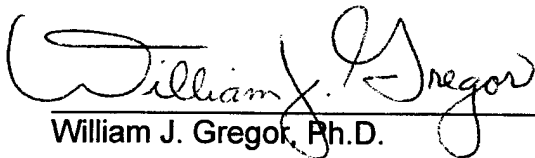
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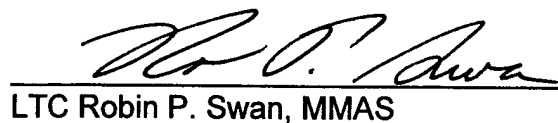
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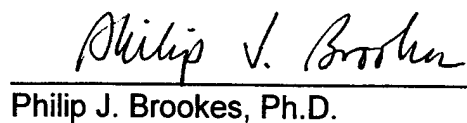
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ABSTRACT

Provide for the Common Defense: The President Bypasses Congress By MAJ David C. Are, USA, 61 pages.

The United States of America has deployed its armed forces 234 times in response to national threats or as a part of a multinational force. In the history of this nation, Congress has declared war only five times. Presidents have deployed the military might of the United States to advance their foreign policy agendas. Many of these deployments have not been with the prior approval of Congress.

Since World War II, the United States has led the world's effort to create international security. This effort has averted a third world war. The creation of collective security bodies assures the continuance of overall world peace. The United States negotiates and ratifies these treaties within the confines of the constitutional powers vested in the executive and legislative branches. The use of these arrangements to employ United States armed forces without prior consent from Congress is contentious.

The War Powers Resolution of 1973 came about as a manifestation of Congress frustration regarding presidential non-compliance with the Constitution. The War Powers Resolution attempted to force the Commander-in-Chief to comply with the intent of the Framers of the Constitution. This has not occurred. Only twice since the enactment of the WPR has the President attempted to comply. Presidential propensity to deploy forces for advancement of foreign policy goals has increased in the last 25 years.

This monograph concludes that the Congress must take positive action to regain its warmaking authority. History of military action without congressional support spans all Presidents since 1973 and encompasses both political parties. President Clinton's current compliance to the WPR offers Congress the precedence to regain their authority.

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Chapter 1

Introduction

Since World War II, the United States has led the world's effort to create international security. The development of collective arrangement bodies has deterred a third world war. These agreements, negotiated by various presidents and ratified by the respective Congresses, have provided common defense. These security pacts have also provided the President war making authority. As presidents use these arrangements to forward foreign policy agendas, how is the military employed without the prior consent of Congress? Congress has the sole power to declare war.

During the past fifty years, the President has assumed national security responsibilities that exceed the written guidance of the constitution. Presidents have used the military might of the United States as a foreign policy instrument and have derived authority for those actions from collective security agreements. In 1973 Congress attempted to regain some of its authority by passing the War Powers Resolution. That resolution contained a number of loopholes that enabled the President to make decisions on using force without consulting Congress. Congress has not attempted to assert its constitutional authority to declare war. For various reasons the Congress has been content to let the President lead in these endeavors. Congress' war making authority can only be regained by a strong congressional stand.

Only Congress has the authority to declare war. Congress must also have prior knowledge of deployments for military actions other than war. The United States has been involved in 238 military actions since the nation's founding in 1776. Of these

military engagements, only five have been declared wars.¹ The last declared war for the United States was World War II. This nation has deployed its military 233 without a declaration of war. The most prolific period of military deployments has been within the last twenty-five years.

The Constitution appoints the President as Commander-in-Chief of the military. In the history of this country, the ability to use the military in foreign policy has varied with each president. Since World War II, the propensity for Presidents to use the military in this capacity has been much greater. The President has deployed the military on 69 operations to advance United States goals abroad or to protect the American lives or vital interests since World War II. These deployment do not mean that the President has done this without the knowledge, or consent, of Congress. However, the ability for the President to use force as a primary part of foreign policy has increased.

The drafters of the constitution ensured that the power to declare war and the power to make war were separated. The President has the right to employ forces where United States vital interests are threatened, and he also has the obligation to do the same. Likewise, the President has the sole power to negotiate treaties. The Congress advises the President's negotiation through the treaty ratification process. Recent history shows that the President will use international relations to circumvent the Congress' authority.

Through the engagement of diplomatic, economic and military means the U.S. paces many aspects of world affairs. As collective security agreements proliferate, so will the U.S. commitments. These treaties and agreements are signed by the President and ratified by the Senate. Congress must approve treaties or provide funds for the implementation of agreements. However, since the early 1940s, presidents have found it

necessary, useful and within their power to deploy and employ armed forces in support of world leadership without the specific approval of Congress.

As an offshoot of this global engagement and in the spirit of worldwide cooperation, several collective security arrangements have been created in the second half of the twentieth century. The creation of the United Nations (UN) and the North Atlantic Treaty Organization (NATO) are great examples of organizations that were developed under political auspices which contain military backing for enforcement of mandates. Agreements ratified by the U.S. Senate influence the decisions to deploy U.S. armed forces. Presidents have used these collective security agreements as authorization documents to deploy U.S. forces without prior Congressional approval. The employment of military forces using a previously approved treaty is easier than gaining the required Congressional approval.

The President of the United States has, by virtue of the global position of the United States, an implied responsibility to facilitate world cooperation to promote peace and stability. Concurrently, the United States also enjoys the success of the most powerful military force on the planet. This military and its capabilities make an inviting tool for presidential foreign policy. Problems arise when the President uses this tool in to advance his foreign policy without the consent of Congress. To promote foreign policy in this manner deviates from the constitutional authority vested him. Right or wrong, the presidential circumvention of congressional power to commit U.S. forces is a part of recent national history. For Congress to maintain its constitutional power it must enforce Presidential compliance with the constitution.

This monograph shows that in modern history, the President of the United States uses collective security agreements and commitments to forward his foreign policy by employing military power. This paper also displays that this utilization of military force has, with little exception, been without the prior consent of Congress. First, the presidential authority for employment of forces is reviewed through a careful examination of the warmaking constitutional powers. A review of United States armed conflict displays how Presidents sent the U.S. to war. A detailed analysis of legal attempts by the Legislative branch follows as Congress attempted to regain its warmaking powers via the War Powers Resolution of 1973. Then, an explanation of key collective security agreements where the United States has military responsibilities is shown. Finally, this paper demonstrates how Presidents bypass congressional approval for the employment of these forces. Recent congressional stands indicate Congress is garnering of legislative spirit and committing to asserting its authority in the war making process.

Chapter 2

Presidential/Congressional Authority for Employment of Armed Forces

Constitutional Powers.

The framers of the United States Constitution clearly and succinctly separated the national authority for employing United States armed forces. The responsibilities of both Congress and the President overlap and are subject to the same checks and balances resident throughout the Constitution itself. A detailed investigation of these responsibilities provides a solid basis from which United States warmaking begins.

The Constitution is precise. The interpretation of the Constitution holds the key to the document's power. The responsibilities imposed upon Congress in Article I, section 8 of the Constitution specifies

[T]he congress shall have the Power ...

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer term than two Years;

...

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions

While the Constitution grants Congress the authority to declare war, the Constitution does not establish the administrative arrangements for control over those forces when employed. Additionally, Congress has no statutory control over the return of these

forces once the forces are deployed. Congress controls any actions by withholding funds supporting the action. The appropriation portion of Article 1, Section 8 addresses this appropriations issue. Key to note is the exclusion of any other action short of war.²

Likewise the Constitution provides responsibilities and authorities to the President. Article II, Section 2 states that "The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of United States."³ Clearly Article II, Section 2 places the President in charge of the military power of the nation.⁴ This article goes on to state that "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." No mention is made of when the President can, or more importantly when he cannot, deploy and employ his forces.

The Constitution guides the executive and legislative branches on deployment of the military. The deployment of military forces has been prevalent throughout the history of this country. Congress addressed the confrontation between Congress and the President concerning when and where US military forces are used and who can order their use. In 1973, Congress passed the War Powers Resolution(WPR) over a presidential veto by President Richard Nixon.

Chapter 3

Pre-1973 Armed Conflict

A review of armed force implementation –

A study of military engagements before and after the WPR offers a means to compare presidential and congressional actions with and without the WPR. The similarities and differences show the impact of the WPR in these instances. Of course no two situations are exactly alike and the personalities of the President, Congress and the United States people as a whole influence the situations as well. The adherence to current (as of the time) mandates shows us the propensity for governmental officials to either relate to policies and laws or to bypass them.

Armed engagements prior to 1973

Obviously all military engagements prior to November of 1973 were pre-WPR. The actions taken by the President and Congress provide a basis to compare the impact of the WPR. To look at some of the actions of the country (government especially) enlightens our study of the United States' position of today. By determining the entrance actions for World War II, the Korean conflict and Vietnam, we can contrast the current foundation for American war making decisions with that prior to passage of the WPR.

World War II serves as a good starting point as that war's conduct and outcome set the stage for current international security system. "Presidential war-making powers increased exponentially in the aftermath of World War II as America's self-image

became one of world policeman.”⁵ The full support of both the House and the Senate followed the president’s call to arms in the wake of the Pearl Harbor attack. With a unanimous House and Senate vote, the United States set out to obtain unconditional surrender from both the Japanese government and the German people. That was the last time Congress declared war.

World War II produced a bipolar world that pitted the Soviet Eastern Block nations against a NATO led Europe. This confrontational competition continued to spread throughout the world as the military and financial power of the United States and the Soviet Union influenced virtually the entire world. The bipolar international security environment caused by the U.S. and the USSR competition shaped the war making ability of the United States.

Ever-increasing tensions worldwide forced the United Nations to “save succeeding generations from the scourge of war... reaffirm faith in fundamental human rights... establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”⁶ In addition, the original UN charter speaks of tolerance, strength through unity and “to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest”⁷. The United Nations was developed in an attempt to offer an organization that could offer a neutral force to separate warring nations act to reduce tensions.

The President assumed he had the authority to provide troops for UN missions without Congressional approval because Congress had ratified the United Nations Charter. Congress in opposition to the President’s position enacted the United Nations

Participation Act of 1945. That bill was an attempt to "restrict the President's authority to negotiate agreements with the United Nations."⁸ Congress had no vote in the assignment of American soldiers involved in or assigned to peacekeeping missions worldwide. The UN Participation Act was to force a negotiation between the President and Congress prior to the deployment of forces for UN missions. The negotiation process between the President and Congress has not taken place. The UN support argument still exists today.

In 1950, President Truman deployed American soldiers to the Korean peninsula in support of United Nations actions. Only five years after the passage of the United Nations Participation Act the bill had not survived its first major test. President Truman justified the deployment by referring to the U.S. obligation to the United Nations under the congressionally approved United Nations treaty.⁹ He followed this deployment with a November 1950 announcement of a four-division addition to the forces in Western Europe. The President bypassed Congress and entered the United States into the Korean War.

The Korean conflict, which was an undeclared war, eventually caused more than 100,000 US casualties. Congressional debate raged about the President's authority to send the soldiers. Congress became ever watchful on US foreign policy. Representative John Williams stated "100,000 casualties in an undeclared Korean war, undeclared by Congress, should convince every member of this House that it is the responsibility to take part in and to know as much about foreign affairs as possible."¹⁰

Congress sought to regain its power after the Vietnam war. In 1964 Congress passed the Tonkin-Gulf Resolution which established a virtual blank check for President

Johnson to use for Indochina. With a vote of 414-0 in the House and 88-2 in the Senate, the resolution displayed the total commitment of the American people to resolve Indochina with military. The resolution granted the President unlimited authority.

The Congress approves and supports the determination of the President...to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist in defense of its freedom.

Sec. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution or the Congress.¹¹

Not only was carte-blanche given to the President, but the references to the United Nations Charter and Southeast Asia Collective Defense Treaty clearly denote United States collective security obligations. From the onset of the Vietnam war, it was clear that the Congress of 1964 felt that the President should certainly serve as Commander-in-Chief and defacto Chief-of-Police of the world police force.

Four years after the Gulf of Tonkin Resolution passed, congressional pressure to end the war had gained momentum. To deny funding for deployment into Thailand or Laos, Congress passed the 1969 Church amendment. "The amendment was designed to assert Congress in the war-making process and avoid an American escalation of the war into those countries." Congress sought to take back some of the powers released to Johnson in 1964.¹² This attempt to regain control of military force deployments ended four years later as the War Powers Resolution passed.

Chapter 4

War Powers Resolution of 1973

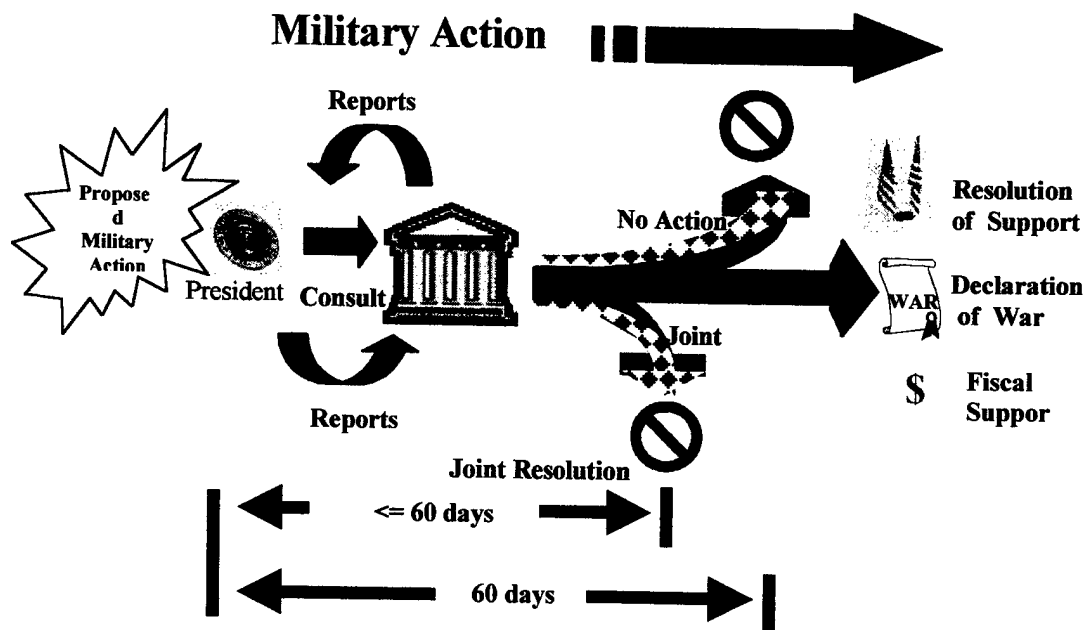
Introduction

The War Powers Resolution of 1973 (WPR) represents a congressional attempt to regain constitutional authority. The WPR was a manifestation of Congress' frustration caused by presidential circumvention of congressional authority. In 1973, the record of deployments, the personality of the serving president and the political environment of the time provided the perfect opportunity for this bill. After the close of direct military involvement in the Vietnam War and in the midst of the Watergate scandal, the low level of trust between government and the people mirrored the level of trust between Congress and the President. The WPR was an attempt to ensure the President consults with Congress "in every possible instance" when considering or deploying forces.¹³

Congress sought through the War Powers Resolution to ensure virtually seamless and relatively undelayed dialogue between the Executive and Legislative branches of the government prior to military deployment. To do this the War Powers Resolution directs the President to submit a report to Congress within 48 hours following the introduction of troops into a hostile area. Once the report is submitted, the Congress can, but is not required to, take affirmative action to support the deployment. However, if Congress takes no legislative action the WPR specifies that the President may continue operations for sixty days (ninety in special cases) after which he must withdraw troops. Congress can also terminate the military action with a concurrent resolution to terminate actions. The termination resolution is not a statute, therefore, its passage does not require

presidential concurrence and is not subject to a veto. On the surface, the WPR seems fairly simple, straightforward and prescriptive.

Problems arise with the WPR when dealing with eventualities other than a declared war. The resolution does not specifically mention military actions taken by the President or Congress to protect of American citizens, within the United States or abroad, to protect “vital interests”, or to respond to a national emergency.



While the definitions of these situations can and do change with each President, so can and do the actions taken. In the absence of written guidance to govern these situations, the interpretation of each individual situation is subject to scrutiny. Since the enactment of the WPR there have been over 235 deployments of United States Armed forces. Presidents have only complied with the WPR twice¹⁴ and only once has it been strictly adhered to.¹⁵

Post War Powers Resolution responsibilities

In 1973, Congress found it necessary to attempt to clarify the intent of the United States constitutional fathers. The War Powers Resolution's published intent is to "insure that the collective judgement of both Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated."¹⁶ It is this "collective judgement" which provides the framework for the resolution. The responsibilities of Congress and the President are in some instances either not specifically stated or are open to various interpretations. Presidents have interpreted the resolution to best fit their foreign policy agendas. There are five important sections or subsections of the WPR which govern the process of the President and Congress.

The resolution first attempts to define the President's responsibilities as Commander-in-Chief. After restating the constitutional powers, the resolution stipulates the President's actions within two sections: Consultation and Reporting. The Consultation section states, "The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated." The phrases "every possible instance" and moreover the term "before introducing" within this key section of the resolution indicate that Congress wanted to be consulted before all deployments. The section further states that the President "shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed

from situations.” Simply stated, Congress created a continuous requirement for consultation.¹⁷

The Reporting section of the WPR is very specific, unlike the general nature of section three¹⁸. The Reporting section addresses actions that fall short of declared war. The initial Presidential report to Congress occurs, “Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) ...”¹⁹ The reporting requirement is described by “so long as armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.”²⁰ This reporting is to take place after the consultation phase described above.

The WPR intends the President to consult with Congress prior to the deployment/employment of forces absent of a declaration of war. Following consultation the President submits a series of reports to Congress. The President, acting as Commander-in-Chief, gains permission and then continually informs Congress on the “consulted action(s).”

Congress acts after the initial consultation takes place between the President and Congress. Congress does not vote until after the President consults pursuant to the WPR. The congressional actions include approval or disapproval of the action and timelines for these proposed military action.

The resolution drafters attempted to ensure that Congress fully appreciates the importance of the timeliness of the actions involved in this resolution. They also sought to ensure full equality between the House of Representatives and the Senate. The first

requirement of section five of the WPR is that "Each report submitted pursuant to section 4 (a) (1) [the reporting section] shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day." After the report is submitted to both leaders, it is then forwarded to the appropriate committees on foreign affairs.²¹ Both houses of Congress receive the report in the shortest time possible.

The key portions of the resolution is found in the next two sub-sections. These sub-sections are concerned with the timeframe for congressional approval of the President actions. These two sections bound the military deployment by 60 or 90 day window.²²

After the initial report is submitted (or required), the military action must be halted unless one of the three conditions exist. The WPR states that "the President shall terminate any use of United States Armed Forces ... unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces. (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States."²³ The Congress, if able, may approve and support proposed military actions. Congress can stop the use of force by either passing a joint resolution to discontinue the use of force or it can leave the 60 day provision by simply failing to provide support. Simply stated, 60 days after commencement of hostile military operations absent a declaration of war or a resolution of support, the President must cease operations.

Congress can expedite termination of military actions by passing a Joint Resolution. The WPR holds unprecedented distinction as it allows Congress to employ

law like power without requiring presidential review. The President's inability to veto a resolution negates his ability to force a two-thirds congressional override. Therefore, if both houses vote to terminate a conflict, the United States Armed Forces must "be removed by the President if the Congress so directs by concurrent resolution." This provision is key in that if the President has complied with the WPR, then Congress can terminate operations over the objections of the Commander-in-Chief.

The overall power of the WPR rest in the hands of a focussed and coordinated Congress. After activation of the WPR, the strong and astute Congress can either support the action or terminate it. The Congress that is either disjointed or politically cautious can simply wait the 60 days and sidestep with inaction.

Once the President abides by the WPR, he is politically powerless until a support resolution (or declaration of war) comes from Congress. There are two provisions found within the WPR that permit the President to deploy and employ forces for more than sixty days. He can receive support from Congress in the above-mentioned manner, or he can simply not report in accordance with the WPR. By not invoking the WPR and avoiding the initial consultation with Congress, the President can claim that he is not subject to its provisions.

To deploy forces without a declaration of war or adhering to the WPR, the President must justify his actions. Forces have deployed to protect vital interests and citizens of the U.S. in full compliance of the Constitution. However, the majority of the post-1973 deployments were under the auspices of collective security agreements.

Chapter 5

Collective Security Agreements and Organizations

Pre- and Post-1973

The War Powers Resolution pertains to the United States alone. The United States also participates in the collective security efforts. A series of treaties and agreements has led to the current collective security arrangements. The North Atlantic Treaty Organization (NATO) leads the world as the foremost collective security organization.

General Collective Security

As a concept, collective security is very simple, "all for one and one for all." The purpose of collective security is to combine the efforts and assets of the members in order to produce effects, which protect those same components. Taken to the extreme, security, economies, free market trade and tourism all benefit from a collective security environment.

The burden of collective security, like any collective agreement, are borne unequally when one of the partners does not perform as expected. Treaty partners can fail to fulfill their obligations for a variety of reasons. One key factor is the partner's domestic agenda. When the intra-national goals and expectations do not match up with the agreed upon requirements, obvious friction will occur. Conflict within governments over collective requirements and domestic agendas has forced re-elections, coups, and wars.

The idea of collective security came to the forefront in the twentieth century. With the rise of European adversarial tendencies and the growing economies of many nations, including the United States, a joining of forces occurred. As the century has progressed, so have the intricacies of collective security and the encumbrances.

League of Nations

The United States began the collective security era. In 1919, President Woodrow Wilson proposed a League of Nations to help facilitate international cooperation and security. The U.S. never ratified this agreement and was never a member. However, this organization provided the foundation for collective security today.

The opening paragraph in the League of Nations covenant states that “the High Contracting Parties, In order to promote international cooperation and to achieve international peace and security...”²⁴ as the primary focus. From the onset it is clear that security is the cornerstone of this agreement.

Articles ten and eleven of the Charter of the League even further codify a collective relationship and its efforts in case of conflict. Article ten states “The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.” Article eleven continues this thought as it says “Any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League.”²⁵ In addition to the League members, we also see the overall security view taken by the members.

United Nations

The League of Nations laid the foundation for the United Nations. In 1945 the United Nations Charter was signed to "save succeeding generations from the scourge of war."²⁶ This organization is key in that it attempts to prevent war without the use of military force. Initial UN efforts called for no standing forces and placed the bulk of their war preventing effort into the political arena. However, the United Nation's first stated purpose is "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace."²⁷ Clearly, the drafters of the UN Charter understood the need for collective military security and recognize that collective security is only attainable through political efforts backed by military might.

The UN has endured the test of time. The political nature of the UN and its strength has wavered for over fifty years. As the supreme collective security body of the world today, the UN's powers still rest with the individual states. Their efforts ensure collective security measures can be backed financially and militarily. It is the UN Charter and UN resolutions, which have been the vanguard of most United States military actions in the last fifteen years. UN sponsored military operations are always an attempt to restore or enforce peace.

The United Nations performs the majority of non-humanitarian missions under the title of peacekeeping or peace-enforcement. "Peacekeeping is an innovation of the United Nations, improvised in response to the cold war constraints that prevented the more forceful actions originally envisioned by the drafters of the UN Charter."²⁸ The

charter of the UN calls for the pacific settlement of disputes under Chapter VI and enforcement under Chapter VII. Peacekeeping is widely accepted as falling between these two chapters and is often referred to as "Chapter six and one-half."

Most recently the UN has been the agent for missions into Iraq, Somalia, Haiti, Bosnia and Kosovo. With resolutions to support military action in each of these cases²⁹, the United States has led an existing collective security team. The success of the military in each of these recent UN missions can be linked directly to the collective security organization. The United States' success in these missions, result from a combination of the organization, the President's venue for committing forces, and the media presentation of these actions.

The UN supported the defeat of Iraqi forces by passing several resolutions that were built from the August 2, 1990 Resolution 660. Resolution 660 stated that "[T]he Security Council, Condemns the invasion of Kuwait."³⁰ Twelve more resolutions were written to either condemn Iraqi aggression or sponsor allied military action. The final resolution, Resolution 687, stated that the UN welcomed "the restoration to Kuwait of its sovereignty, independence, and territorial integrity and the return of its legitimate Government."³¹

Resolutions pertaining to the Iraqi invasion set the stage for the construction of the largest battle force since World War II. The United States led coalition included fourteen different nations each providing military power to uphold the UN Security Council Resolutions. President George Bush and Secretary of State James Baker worked tirelessly to form that coalition. They filled the ranks of the coalition force by bridging

religious and cultural gaps and by the excluding key allies.³² Evidence of this linkage is resident in the Israeli abstention from fighting.

Bush and Baker set the stage for assembly of the impressive coalition force. That formidable collective effort was solid from the lowest military ranks to the highest political agenda. The allied coalition team was built under the authority of the UN resolutions without regard to domestic legalities. For the United States, the international political successes would come at a domestic price that will be discussed later.

The United Nations was positioned to provide support for a failing nation in 1993. In June of 1993, a Pakistani patrol was ambushed in Somalia. The Pakistani force was in Somalia providing security for relief efforts under the United Nations Observer Mission Somalia II (UNOSOM II). The attack "set off a politically disastrous military reaction"³³ that prompted the United Nations to pass UN Security Resolution 837. Resolution 837 strongly condemned the "unprovoked armed attacks" and authorized "all necessary measures against all those responsible"³⁴

Once again, President Bush, using the November 1992 United Nations Resolution as authorization, deployed American forces to the region. From the onset, the media reported every aspect of the mission. Several media organizations filmed Navy special operations forces coming ashore in preparation for a Marine landing. October 4, 1993, the US Rangers suffered a tactical defeat trying to accomplish a mission that reflected an interpretation of UN resolutions. In an attempt to seize Somali Warlord Mohamed Farah Aideed³⁵, the Rangers suffered severe casualties. The media abruptly turned American opinion. The filming of American dead and captured American prisoners forced the Congress to halt the US involvement in the operation in October 1993.

North Atlantic Treaty Organization (NATO)

World War II set the stage for history's most famous collective security agreement. The North Atlantic Treaty of April 1949 solidified the European United States relationship. A feeling of security came about as the collective security of Europe and the United States was formalized. This alliance was built for the overall good of the signatories. "We are like a group of householders, living in the same locality, who decide to express their community of interests by entering into a formal association for their mutual self-protection."³⁶ It was this neighborhood which provided security against large confrontations like the Cold War as well as more modern regional conflicts such as Kosovo and Bosnia.

In the Preamble of the North Atlantic Treaty, all parties agreed to "safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law." The treaty continues on to say "They [the members] seek to promote stability and well-being in the North Atlantic area. They are resolved to unite their efforts for collective defense and for the preservation of peace and security."³⁷ In the NATO treaty we see that the reference to people with similar heritage and the overall well being is an essential part of the organization itself.

The recent NATO operation in the Yugoslavian province of Kosovo brings a new vigor into the organization itself. Ironically, the organization that was developed to promote and defend against a common enemy has gone on the offense. Against the backdrop of ethnic cleansing, NATO is "fundamentally there because the alliance will not have meaning in the twenty-first century if it permits the slaughter of innocents on its

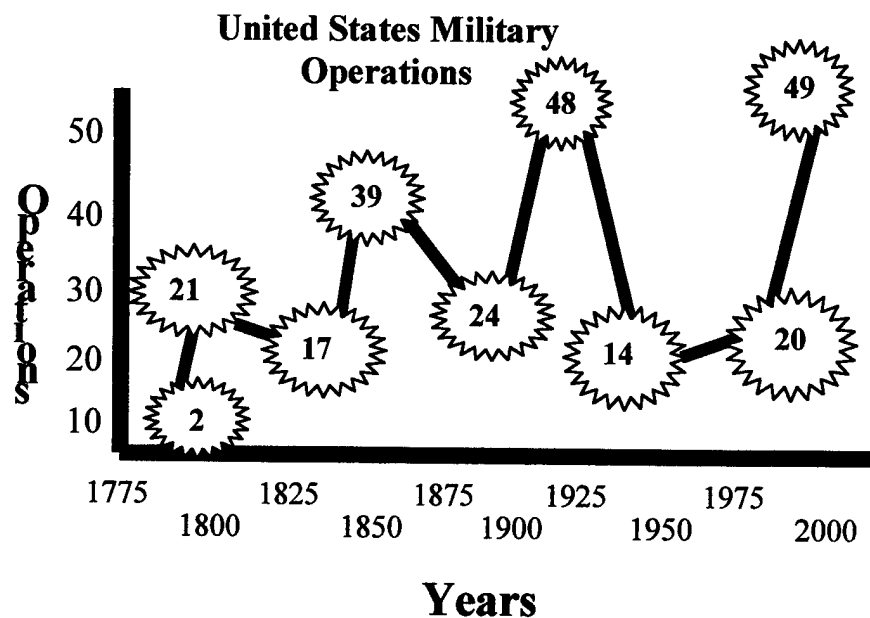
doorstep.”³⁸ From this statement it appears that NATO, an organization that sought to prevent war, is going to war to prevent genocide as well as to maintain the alliance.

A U.S. brokered initiative to embargo Yugoslavia and the Serbian government caused concern within the ranks of NATO. Without a declaration of war, the initiative to blockade Serbia is viewed by some NATO members as an illegal act. As powers such as the United States and Britain push for the embargo, key members such as France claim it is legal in the absence of a war declaration or UN resolution. Even in a collective security effort, a consensus on the methods to be used to confront a belligerent can be difficult to achieve. “In a polyglot alliance that no longer confronts the Soviet bear, unity does not come easily.”³⁹ Unilaterally, Presidential directives support actions that are important to the U.S. but fall short of the needed multilateral consensus.

Chapter 6

Presidential Directives Since 1973

As the twenty-first century arrives, the United States military completes its busiest quarter century. The number of military deployments since 1975 surpass the 48 deployments that occurred in the first 25 years of this century. The trend clearly shows that the President uses the military to advance foreign policy more than ever before. The United States participates in various the collective security agreements. Simultaneously, the legal constraints established by the Constitution and the War Powers Act govern deployment of U.S. forces. Presidential domestic political skill has allowed this increase in deployments without declarations of war and only one use of the War Powers Resolution.



Executive Documentation

Key in the process for the WPR is the concern and direction given by the various presidents. A series of executive papers adjusted Presidential policy for each. These executive documents are known by a multitude of titles such as the National Decision Memoranda in the Ford administration to the current Presidential Decision Directive of Clinton. These relatively short papers set immediate policy on very specific issues. When these policy shifts affect the deployment of forces, they can and do affect the interpretation of the WPR. Presidents Reagan, Bush and Clinton have all addressed the military deployment issue indirectly through directives. The directives show vividly how each President sought to circumvent the WPR consultation and reporting process.

President Reagan was the first President to produce directives that allowed him to stress the limits of his constitutional authority and to bypass the WPR. With attempts to act either unilaterally or multilaterally, Reagan signed two National Security Decision Directives (NSDD) that provided United States forces to other nations in a collective effort. NSDDs 100 and 277 each addressed United States military assistance, one specifically and the other generally.

NSDD 100 not only expressed President Reagan's absolute desire to not adhere to the WPR, but also extended a multilateral support peace initiative to Central American countries. "The democratic states of Central America must be assisted to the maximum degree possible in defending themselves against externally supported subversion or hostile neighbors."⁴⁰ NSDD 100 provided a list of measures to be undertaken to ensure

communism's exclusion from the Central American region. Among the measures were a military exercise called AHAUS TARA II "on or about August 1, 1983."⁴¹ That exercise placed significant US rapid deployment forces in the country of Honduras in the late 1983. Alone, the exercise needed no congressional approval. The intention of this exercise was to influence the power in the region via a show of force.

The Reagan administration showed more resolve with respect to deployment and global action in June of 1987. President Reagan's National Policy and Strategy for Low Intensity Conflict, NSDD 277, set policy for "a national policy and strategy for Low Intensity Conflict."⁴² Within this NSDD, President Reagan mandated a strategy and identified resources to be used. Within the strategy section of the directive, Reagan stated, "the U.S. must help supported governments establish a comprehensive strategy for isolating anti-democratic, destabilizing elements and for developing meaningful economic, political, and security goals."⁴³ However, the use of the words "supported governments" implied that engagement with the government was ongoing and, therefore, placed this international relationship squarely in a collective security posture albeit internal to the host country. The end of the cold war set the stage for this bilateral effort that led itself to future multilateral consortiums. The use of directives continued after the Reagan presidency.

President Bush placed the country on the path of international collective security. George Bush promoted coalition and multilateral security worldwide. A record of presidential statements and actions displayed his desire not only to participate in collective security but also to lead it. President Bush did not hesitate to place the WPR in

the back of his decision-making criteria. Bush often used coalition efforts to achieve national goals.

National Security Directive 26 began a string of events that eventually led to the Persian Gulf conflict. Entitled "U.S. Policy Toward the Persian Gulf," it addressed the "access to Persian Gulf Oil and security of key friendly states in the area."⁴⁴ The remainder of the previously SECRET directive discussed the use of force "against the Soviet Union or any other regional power with interests inimical to our own."⁴⁵ These hostile interests included the Iraqi threat to the national sovereignty of some Arab states including Saudi Arabia.⁴⁶

Of great importance to NSD 26 was its overt discussion pertaining to the idea of coalition or collective security. "The United States also will encourage the effective support and participation of our western allies and Japan to promote our mutual interests..."⁴⁷ President Bush actively pursued allied participation from nations other than those within the region. The inference was to NATO allies, with Japan included due to the Japanese reliance on Persian Gulf supplied oil. As applied to the region, NSD 26 served as a precursor. However, some of the individual countries listed within the directive and the eventual United States relationships with those countries did not develop as the President planned.⁴⁸

In August of 1990, President Bush's opinion of Iraq had changed significantly. NSD 54, signed on January 15, 1991, "outlined the constitutional authorities that the administration contended permitted the president to use military force against Iraq without a declaration of war from Congress."⁴⁹ This single document served as the basis for the January 16 attack on the Iraqi forces in Kuwait and eventually Iraq itself.

Bush's ability to sway foreign policy with the use of NSDs influenced President Clinton. The directives issued by President Clinton have served to increase the United State's position in the world. With minimal foreign affairs background, President Clinton seeks to facilitate worldwide cooperation with primary focus on the national agenda. Clinton promotes an increasing role for the United Nations with the U.S. acting as the lead in most instances. Concurrently, he wishes to significantly decrease the financial responsibility of the United States.

Presidential Decision Directives (PDD) 13⁵⁰ (Peacekeeping Operations)(unsigned) and 25 (U.S. Policy on Reforming Multilateral Peace Operations) clearly state the President's vision. Signed May 6, 1994, PDD 25 promotes a new world approach to peacekeeping operations. This PDD follows an extensive multi agency review of U.S. support to peacekeeping operations with focus on United Nations operations. President Clinton fully laid the foundation for future collective security efforts worldwide.

PDD 25 primary thesis points to increased UN involvement worldwide and decreased US fiscal responsibilities. President Clinton made concessions in the document. He subordinates United States Armed Forces under the operational control of other than US commanders in certain cases. "The President has the authority to place U.S. forces under the operational control of a foreign commander when doing so serves American security interests."⁵¹ This is the most prominent statement made by a president displaying support for collective security.

PDD 25 makes constant reference to the primary need for national security; it is constantly linked to multilateral settings and situations. The introduction of the directive

the statement, "When our interests dictate, the U.S. must be willing and able to fight and win wars, unilaterally whenever necessary." PDD 25 follows immediately with

"UN peace operations cannot substitute for this requirement. (Note: For simplicity, the term peace operations is used in this document to cover the entire spectrum of activities from traditional peacekeeping to peace enforcement aimed at defusing and resolving international conflicts. Circumstances will arise, however, when multilateral action best serves U.S. interests in preserving or restoring peace. In such cases, the UN can be an important instrument for collective action."⁵²

Expertly, Clinton ties the UN's use of United States assets to the increased role of the UN in resolving conflict. PDD 25 similarly addresses the fiscal aspects of UN support.

With respect to the WPR, President Clinton has suggested an amendment to the War Powers resolution, "to introduce a consultative mechanism and to eliminate the sixty-day withdrawal provisions."⁵³ Clearly what the President is seeking is to have a firm grip on the controls of the UN. Concurrently, he wishes to provide support for an extended duration for military operations. While PDD 25 gives the impression of the "Knight in Shining Armor", President Clinton stresses multilateral operations when he states "The U.S. cannot be the world's policeman."⁵⁴ President Clinton suggests that the U.S. can decrease its contributions to UN peacekeeping missions if the congressional controls on U.S. military forces are relaxed.

President Clinton's October 1998 National Security Strategy continues to express a multilateral theme. Applying the PDD 25 theme across the international arena, Clinton suggests that "international cooperation will be vital for building security in the next century."⁵⁵ Throughout his term, President Clinton has intertwined the actions and the goals of the United States with those of other nations or organizations in an attempt to lead NATO toward his collective security ends. "These arrangements will inevitably

require commitment of U.S. resources and may make unilateral U.S. action more difficult.”⁵⁶ This difficulty is unrecognized. The number of deployments per quarter century has risen since the WPR.

Chapter 7

Post-1973 Armed Conflict

Armed engagements since 1973

The introduction and passage of the War Powers Resolution might have had a profound effect on the deployment of forces. With a clear statute that clearly described the intent of Congress, force employment issues should be clear. This simply has not been the case. Despite 49 military actions since that bill's enactment, only two Presidents have attempted to comply with the resolution's guidelines. A look at some military actions since WPR enactment displays a trend, that mirrors that of pre-WPR presidential commitments.

On the 15th of May 1975, President Ford reported to Congress that he had ordered US forces to retake control of the SS Mayaguez. The Mayaguez was a US crewed merchant ship that was seized by a Cambodian naval patrol boat in international waters. The Mayaguez was ordered to proceed to a nearby island. US naval forces in a small battle retook the Mayaguez. Had President Ford complied with the WPR he would have set a precedence that may have compelled subsequent leaders to comply. However, he submitted the report after the entire incident was over. Congress did not view President Ford's actions as providing proper consultation under the WPR and therefore, President Ford never started the WPR process. That event meant that the WPR was ineffective.

The Christmas season of 1989 holds another place in military deployment history. President Bush deployed elements of the XVIII Airborne Corps to Panama. The corps joined the United States Southern Command to "protect the lives of American citizens

and [to] bring General Manuel Noriega to justice.” The invasion was the culmination of several months of intense political pressure and troop buildup that ended with the arrest and extradition of General Noriega. President Bush made no attempt to provide Congress an explanation of his actions. Bush stated the invasion was authorized due to “a need to protect American citizens from chaos. Also, it elicited no major congressional disputation and it did not involve a likelihood of land combat that would be costly in American lives.”⁵⁷ Again, this President failed to comply with the WPR and was not penalized for non-compliance.

Perhaps the greatest example of presidential failure to comply with the WPR was the deployment and violent implementation of the forces in Desert Shield and Desert Storm. On August 9, 1990 President Bush ordered the forward deployment of key rapid reaction forces into the Persian Gulf region. The initial task was to assist in the defense of Saudi Arabia. After discussions with King Fahd, President Bush decided to provide a military buildup sufficient for defensive operations.⁵⁸ President Bush stated in his August 9, 1990 letter to Congress “I do not believe involvement in hostilities is imminent; to the contrary, it is my belief that this deployment will facilitate a peaceful resolution of the crisis. If necessary, however, the Forces are fully prepared to defend themselves.”⁵⁹ Congress responded with support for the buildup.

After the November 1990 elections, President Bush announced an additional deployment of over 200,000 forces to the Persian Gulf region. This buildup offered the regional Commander and the Commander-in-Chief an offensive capability if either commander required it. With the introduction of those forces, congressional support began to fragment. The possibility of a war without congressional action seemed

probable. On 30 November, a key moment in the course of the war and the history of the WPR occurred as a result of congressional "consultation." Speaker of the House Thomas Foley stated, "If after January 15th you decide to go to war, you'll have to come to Congress." Senate Majority Leader Mitchell pursued the same line and added the constitutionality issue and "Bush stared coldly in the other direction."⁶⁰ Bush clearly did not consider Congress as a part of the decision to go to war.

The Clinton presidency has had several deployments as well. In the summer of 1998, Serbian forces launched a "brutal offensive against the region's ethnic Albanian majority"⁶¹ including civilians. Yugoslav President Slobodan Milosevic stated that that offensive was in response to the Kosovo Liberation Army (KLA) independence movement. The Yugoslav attempt to rid Yugoslavia of ethnic Albanians caused uproar in the international community and a refugee problem within the surrounding Balkan nations as well. In October 1998, with NATO airstrikes looming, United States envoy, Richard Holbrooke, obtained a cease-fire agreement from Milosevic. That peace lasted five months and collapsed when Serbian special police forces massacred forty-five civilians in the village of Racak. Under intense NATO pressure, talks between Serbian and KLA officials resumed. By March 1999, the positions of two sides diverged and the Serbs refused to sign the agreement. Following this breakdown, Milosevic escalated the drive throughout the country causing deaths, exodus and international outcries for help.

March 24, 1999 saw United States forces once again in action with direction and/or support from NATO. On that date, allied airplanes began an aerial campaign against the Serbian government. On April 9, 1999, for the first time in United States history, President William Clinton "pulled the trigger" on the War Power Resolution and

sought to consult with Congress in accordance with that act. The initial report to the Speaker of the House and the President pro Tempore included the purpose of the action as well as the initial forces to be arrayed against the Republic of Yugoslavia and the Serbian Forces. That report fully complied with the WPR.

The multilateral military opposing Yugoslavia includes the entire political will of NATO and military contributions from ten of the nineteen nations. After several attempts at a NATO brokered peace, this military mission is an effort to cease the current large-scale offensive within the Yugoslav borders. On the surface the political attempts to achieve peace appear to have supported the position of the Kosovar Liberation Army (KLA) militarily. However, "NATO opposes independence for Kosovo on the grounds independence would spur secessionist movements elsewhere and destabilize an already volatile region."⁶² The goal is to force both sides to reach a middle ground and agree to a peaceful and safe compromise.

For the present time, the campaign launched against the Serbian Forces remains an air attack. United States Army surface to surface artillery and attack aviation assets of may be the forerunner to ground maneuver. However, the use of ground forces within the Yugoslav borders is not authorized by NATO nor has it been authorized by the United States Congress.

Chapter 8

Political Conditions for Action

Presidential actions prior to passage of the War Powers Act appear to hold a fairly constant theme. World War II, Korea and Vietnam all hold true to a course of internalized political action in an attempt to rectify a world collective issue.

Multinational forces, employed other than the host nation forces, participated in World War II and Korea. In all three instances, United States domestic political support was high at the onset with support waning at the end of both the Korea and Vietnam wars.

World War II exhibited an example of a global conflict wherein a belligerent (or belligerents) sought to overthrow and overtake nations. The United States did not support Europe in the early stages of the German offensive. As time passed, United States political pressure swung toward support for an Allied Europe. The Japanese attack on Pearl Harbor galvanized American sentiment and will.

The conflict in Korea immediately followed the World War II combined effort. On both the international and domestic fronts the shift to collective security had begun. Over the objections of Congress, the President deployed forces for the overall good of the world in the name of the United Nations.

During Vietnam the debate over the proper constitutional interpretation of congressional and presidential war power peaked. From Kennedy through Johnson and Nixon the debate raged over executive power to use the military. Congress drew a resolute line with respect to war powers and passed the War Powers Resolution. That

statement and position, however, served as a irritant instead of a hindrance for the deployment of military assets. From that point the executive agent of the United States has had to make a conscious decision about the pertinence of the WPR.

President Ford was the first President to test the WPR. History has not fully examined the President's intentions since his initial consultation, however, well intended, was rendered late and therefore did not comply with the WPR. The Mayaguez incident offered a precedent for future actions by the Commander-in-Chief. "Although many members of Congress recognized in the Mayaguez incident that President Ford had not followed the law, they muted their criticism because of the positive reaction to the president's actions."⁶³ That military success far outweighed the constitutional and legal questions about warmaking. With the Mayaguez incident as a baseline, the support for collective type security arrangements enjoyed public endorsement regardless of domestic legal acquiescence.

For President Bush, the Panamanian invasion offered a different view of military action short of declared war. United States forces invaded the territory of a sovereign nation seemingly in violation of international law. The government justified the invasion by citing a domestic drug law with worldwide scope to permit the arrest of Panama's leader. President Bush undertook the invasion without consulting Congress. If it was a police act, it breached the sovereignty of a foreign nation. If it was an act of war it occurred without congressional approval. Neither international law nor domestic constitutionality seemed to matter.

United States efforts in collective security reached its apex in Desert Shield/Storm. President Bush pursued a coalition while he disregarded the Congress.

Bush felt that military force was absolutely necessary. Bush's Presidential documents coupled with his actions when questioned by Congress proved that international relations and the world's opinion of the United States were more important to President Bush than the domestic opinion of his policies.

President Clinton's documentation continues U.S. collective leadership. He publicizes the "need" for American collective agreements. The culmination of his term shows his continued search for collective security throughout the military arena as well as his commitment to law enforcement and combating terrorism. In addition to PDD 25 President Clinton stresses collective efforts in PDDs 63 and 64.

Chapter 9

Conclusion

Since World War II, through a series of negotiated treaties and collective security agreements, U.S. presidents have been able to advance foreign policy through the deployment of military force with a relatively free hand. As a result, congressional concerns have risen concerning presidential adherence to the Constitution and the War Powers Resolution of 1973. Congressional events that require the President to comply with these statutes can come only with vigilant oversight. Until the Kosovo crisis, Congress had been content with indecision after presidential warmaking decisions.

The efforts of Congress to reestablish itself as an integral part in the warmaking process, have not precluded presidential use of military might as a foreign policy tool. This continuing trend can be attributed to several key factors. The current inclination toward the use of collective security has the support of both the executive and the legislative branches of government. As defined in the U.S. Constitution, the negotiation of treaties by the President combined with the ratification process by Congress exemplifies the concurrence in this collective effort. From the UN support of Truman in Korea to the NATO sponsored actions in the Balkans, each President has felt he has had the authority to act without prior congressional approval. Congress, with collective security agreements notwithstanding, has not been able to stem military deployments.

The predominant reason for the inability to stem presidential power is that Congress has not been able to present a unified effort to stifle presidential military initiatives. Congressional reaction to military deployments has been everything from full

support, as in the Gulf of Tonkin Resolution, to divided support of the current Kosovo crisis. Partisan support for presidential ventures and the belief that the President has constitutional authority can also sway lawmaker's opinions. Finally, "some would just as soon let the president take the lead, given the political risks of military adventures that fail."⁶⁴ The actual passing of the War Powers Resolution of 1973 took four years to produce a congressional consensus.

Another reason for the unchecked executive power, is the porous nature of the War Powers Resolution of 1973. The WPR contains verbiage that allows the president to take advantage of loopholes. The statement of "Nothing in this joint resolution ... is intended to alter the constitutional authority of the ... President" in itself provides the opportunity to bypass the law. The WPR refers to the basis of the very document that it attempts to clarify. The application to the President and his views on "vital interests" or the threat to American lives also allows a sidestep of the resolution. The timeliness of the consultation portion is challenged and the presidential argument exemplified by the SS Mayaguez incident.

The United States Constitution appears to be clear when dealing with sending American soldiers to fight. However, subsequent laws such as the War Powers Resolution of 1973 suggest that either the Constitution is not clear or has not been followed. The Founding Fathers of the United States intended that the citizens of this country decide when to send the armed forces into harms way. According to the U.S. Constitution, Congress is instrumental, as an integral part of the collective agency, to declare war.

The nation has only declared war five times in its 223 years of existence. By comparison it has sent its military into action 234 times. With a declaration of war occurring on average every 44 years and military action occurring on average once a year, how have the additional 229 deployments happened? Have the country or its interests been threatened every year? The answer lies with the interests and the foreign policy goals of the President and the reluctance of Congress to leash the dog of war. Congress must take and hold its constitutionally guaranteed authority to declare war and must ensure that presidential power does not bypass the decision that is reserved ultimately for the people.

Appendix A

War Powers Act of 1973

United States Statutes At Large, Public Law 93-148, 1973,

JOINT RESOLUTION

Concerning the war powers of Congress and the President.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Short Title

Section 1. This joint resolution may be cited as the " War Powers Resolution".
Purpose and Policy

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

Consultation

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

Reporting

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced --

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation; the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth --

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situations as well as on

the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once very six months.

Congressional Action

Sec. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs on the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress

(1) has declared war or has enacted a specific authorization for such use of United States Armed Forces,

(2) has extended by law such sixty-day period, or

(3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

Congressional Priority Procedures for Joint Resolution of Bill

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixtyday period specified in such section shall be referred to the Committee on Foreign Affairs of the House of

Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

Congressional Priority Procedures for Concurrent Resolution

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

Interpretation of Joint Resolution

Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred --

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution --

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

Separability Clause

Sec. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

Effective Date

Sec. 10. This joint resolution shall take effect on the date of its enactment.

Carl Albert
Speaker of the House of Representatives.

James O. Eastland
President of the Senate pro tempore.

In the House of Representatives, U.S., November 7, 1973.

The House of Representatives having proceeded to reconsider the resolution (H.J. Res. 542) entitled "Joint resolution concerning the war powers of Congress and the President", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said resolution pass, two-thirds of the House of Representatives agreeing to pass the same.

**Attest:
W. Pat Jennings
Clerk.**

**I certify that this Joint Resolution originated in the House of Representatives.
W. Pat Jennings
Clerk.
In the Senate of the United States
November 7, 1973.**

**The Senate having proceeded to reconsider the joint resolution (H.J. Res. 542) entitled "Joint resolution concerning the war powers of Congress and the President", returned by the President of the United States with his objections of the House of Representatives, in which it originated, it was
Resolved, That the said joint resolution pass, two-thirds of the Senators present having voted in the affirmative.
Attest:**

**Francis R. Valeo
Secretary.**

Endnotes

- ¹ The five congressionally declared wars are: the War of 1812, the Mexican War of 1846, the Spanish American War of 1898, World War I declared in 1917 and World War II declared in 1941.
- ² The Constitution of the United States of America, Article I, Section 8.
- ³ Ibid, Article II, Section 2.
- ⁴ Alexander Hamilton, when writing about the President as Commander in Chief of the army and navy, states in *The Federalist* Number 74 "The propriety of this provision is so evident in itself; and it is at the same time so consonant to the precedents of the State constitutions in general, that little need be said to explain or enforce it." *The Federalist Papers*, (bantam Books: New York) 1982. 376.
- ⁵ A list and brief explanation of all military actions in the history of the United States can be found on the Internet at <http://www.history.navy.mil/wars/foabroad.htm>
- ⁶ Public Law 93-148. 93rd Congress, House Joint Resolution 542, War Powers Resolution (WPR), November 7, 1973, Section 4, sub-section (a), paragraph (1),
- ⁷ President Gerald Ford reported on the Mayaguez incident at the 48-hour mark. The incident was actually over before the report and therefor the WPR was unnecessary just as it was enacted.
- ⁸ President William J. Clinton enacted the War Powers Resolution at the beginning of the Kosovo Crisis. At the time of this document, the crisis is still ongoing; therefore, absolute adherence to the resolution cannot be determined at this time.
- ⁹ Public Law 93-148, Section 2, sub-section (a).
- ¹⁰ Ibid, Section 3.
- ¹¹ Section three of the War Powers Resolution does not address a timeline. It speaks of continuous consultation with Congress as a general rule.
- ¹² Sub-section (a) of section 4 describes situations, where there exist an absence of declaration of war, when the Armed Forces are introduced where the WPR should be adhered to.
- ¹³ Public Law 93-148, Section 3.
- ¹⁴ Ibid, Section 5, sub-section (a).
- ¹⁵ War powers resolution Section 6(a) and 6(b) place a limit on the number of days military forces can be deployed without a joint resolution from Congress.
- ¹⁶ Ibid, Section 5, sub-section (b).
- ¹⁷ Snyder, Louis L. Fifty Major Documents of the Twentieth Century, "Covenant of the League of Nations 1919, (Van Nostrand: New York), 31.
- ¹⁸ Ibid, 35.
- ¹⁹ Snyder, 152.

²⁰ Ibid, 153.

²¹ Lyons, Terrence and Ahmed I Samatar, *Somalia State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction*, (The Brooking Institute: Washington DC) 1995. 3.

²² For the Kosovo crisis, NATO has expanded the Bosnia resolution to include all actions in the Balkans. This expansion of the original mandate is not accepted throughout the UN.

²³ United Nations Security Council Resolution 660, August 2, 1990, (New York) as reported in *Triumph Without Victory*, Appendix A, p. 416. This resolution came about after the Iraqi invasion of Kuwait and passed by a vote of 14-0 with one abstention (Yemen).

²⁴ United Nations Security Resolution 687, April 2, 1991, (New York) as reported in *Triumph Without Victory*, Appendix A, p. 432 This resolution marked the end of the UN resolutions against Iraq with respect to the Gulf War. Several resolutions came about as the result of repression and killing of ethnic populations within the Iraq borders following Resolution 687. Resolution 687 passed with a vote of 12 for, 1 against (Cuba), and 2 abstentions (Ecuador and Yemen).

²⁵ Israel was not included in the coalition and was strongly discouraged from using military action. The exclusion of the Jewish state was seen as key to keeping together the Muslim support for the coalition. To support the Israeli decision, Patriot Missiles from the United States were deployed with Israeli Patriots to provide air and missile defense against Iraqi air or SCUD attacks.

²⁶ Lyons, 57.

²⁷ United Nations Security Resolution 837, 6 June 1993, (New York) as reported in *Somalia State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction*, (The Brooking Institute: Washington DC) 1995. 57.

²⁸ Mohamed Farah Aideed's official title is General. He was the leader of the Somali National Alliance (SNA) which controlled most of Mogadishu township. His leadership became a quest for the United States as US governmental agencies attempted to gain control of Somali warring factions.

²⁹ Truman, Harry S. as reported by Brian Burnes "America left isolationist path behind", The Kansas City Star 24 April 1999, A6.

³⁰ Snyder, 145.

³¹ Clinton, William J., "Leaders Pledge United Front", The Kansas City Star, April 24, 1999, Sec. A, 1.

³² Schweid, Barry, "Consensus harder to achieve among NATO ranks", The Associated Press, April 26, 1999.

³³ Reagan, Ronald, Enhanced U.S. Military Activity and Assistance for the Central American Region, "National Security Decision Directive 100", 28 July 1983. 1.

³⁴ Ibid, 1.

³⁵ Reagan, Ronald, National Policy and Strategy for Low Intensity Conflict, "National Security Decision Directive 277", 15 June 1987, 1.

³⁶ Ibid, 3.

³⁷ Bush, George W., U.S. Policy Toward the Persian Gulf, "National Security Directive 26", 2 October 1989, 1.

³⁸ Ibid, 1.

³⁹ The original purpose for deploying forces to operations Desert Shield was assist in the protection of the Kingdom of Saudi Arabia. A Desert Storm objective was to expel Iraqi forces from Kuwait and restore the legitimate government to power.

⁴⁰ Ibid, 1.

⁴¹ The specific mention of Iraq seems to be contrary to history. Within the NSD 26, President Bush encourages both private industry and government to "pursue, and seek to facilitate, opportunities" for participation in the "reconstruction of the Iraqi economy." President Bush also encourages the sale of military assistance "e.g. training courses and medical exchanges." It is unclear if the opening of an eight year F-16 bombing range is what President Bush had intended.

⁴² Simpson, Christopher, *National Security Directives of the Reagan and Bush Administrations The Declassified History of U.S. Political and Military Policy, 1981 – 1991*, (Westview Press: Boulder, Co) 1995, 947.

⁴³ PDD 13 is the original directive that described United States support to the United Nations. Due to public outcry over national assets and products (mainly intelligence products) to be provided to the United Nations, the document was rewritten into PDD 25.

⁴⁴ Clinton, William J., U.S. Policy on reforming Multilateral Peace Operations, "Presidential Decision Directive 25", 6 May 6, 1994, 3.

⁴⁵ Ibid, 4.

⁴⁶ Ibid, 13.

⁴⁷ Ibid, 13.

⁴⁸ Clinton, William J., A National Security Strategy for a New Century, (The White House) October 1998, 7.

⁴⁹ Gregor, William J. Ph.D. "National Security Strategy Report, October 1998", White Paper, December 18, 1998. 1.

⁵⁰ Berry, Frederick S, "The Impact of the 1973 War Powers Resolution on the Military", United States War College, Carlisle Barracks, PA, 7 April 1989. 15.

⁵¹ Snyder, 152.

⁵² Ibid, 153.

⁵³ Berry, 25.

⁵⁴ Eagleton, Thomas F. *War and Presidential Power: A Chronicle of Congressional Surrender* (New York: Liveright, 1974) p. 66-68.

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